**SERVICES AGREEMENT**

entered into by and between

TheSouth African Revenue Service, an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997)

**(“SARS”)**

and

…., a company incorporated in terms of the laws of the Republic of South Africa, with registration number: …

**(“Service Provider”)**

**Bernaette Sehapi**



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1. **PREAMBLE**
   1. The South African Revenue Service (“SARS”) solicited bids through RFP31/2017, for the customisation and implementation of Management Programs-Foundational / Entry-Level Management Programme also referred to as Operations Management Development Programme (OMDP) and Management Development Programme (MDP) for Middle Managers on behalf of SARS.
2. **APPOINTMENT**

SARS hereby appoints the Service Provider to provide the Services as defined in this Agreement, which appointment the Service Provider accepts on the terms and conditions set forth hereunder.

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings-
      1. “**Agreement**” means this Services Agreement and all annexures hereto, which form an integral part of this Agreement. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both Parties.
      2. **“Applicable law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
         1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
         2. The common law;
         3. Any binding court order, judgment or decree;
         4. Any applicable industry code of conduct, policy or standard enforceable by law; or
         5. Any applicable direction, policy or order that is given by a Regulatory Authority.
      3. “**Authorised Signatory**” means a signatory authorised by SARS and the Service Provider respectively to sign the Agreement, any amendments and/or addenda hereto.
      4. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa.
      5. “**Commencement Date**” means …2018, notwithstanding the date of signature of this Agreement.
      6. “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within reasonable control of the Party.
      7. “**Designated Representative**” means a person designated by each Party for the management of the Agreement, to whom all communication regarding this Agreement shall be sent.
      8. “**Key Personnel**” means those employees or agents of the Service Provider listed in the Service Provider’s proposal who are nominated and shall be dedicated to the performance and management of the Services to SARS and shall be deemed to be material and integral to the provision of the Services.
      9. **“Proposal”** means the bid proposal submitted by the Service Provider in response to RFP 31/2017 issued by SARS.
      10. “**Parties**” means SARS and the Service Provider and “party” ­­­­as the context requires, is a reference to any one of them.
      11. “**Regulatory Authority”** means any organ of state, government agency or institution, International Body or Organisation which has –
          1. jurisdiction over the Services or parts thereof, or
          2. administrative or oversight responsibility pertaining to any Applicable Law.
      12. “**RFP 31/2017**”, subject to any contrary indication, refers to SARS’s invitation to service providers to submit bid proposals for the customisation and implementation of Management Programs for SARS (OMDP and MDP), which RFP is incorporated herein by reference.
      13. “**SARS**” means the South African Revenue Service, an organ of state established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.
      14. “**Service Provider**” means …, incorporated …, with registration number …, and with its registered address at ….
      15. “**Services**” means the customisation and implementation of Management Programs for SARS (that is, the Foundational / Entry-Level Management Programme also referred to as Operations Management Development Programme (OMDP) and Management Development Programme (MDP) for Middle Managers) as contemplated in RFP 31/2017, including functions or responsibilities not specifically mentioned therein but which are reasonably and necessarily required for the proper performance and provision of the Services.
      16. “**Signature Date**” means the date on which the last Party affixes its signature to this Agreement.
      17. “**Termination Date**” means…2021.
      18. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
   2. The headings in this Agreement are for reference purposes only and are not to be construed to affect the interpretation of any terms in the Agreement.
   3. Any reference in this Agreement to-
      1. A clause shall, subject to any contrary indication, mean a reference to a clause in this Agreement; and
      2. A Person refers to any person including juristic entities.
   4. Unless inconsistent with the context or save where the contrary is expressly indicated-
      1. When any number of days is prescribed in this Agreement, the same shall be calculated exclusively of the first and inclusively of the last day unless the latter falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
      2. This Agreement shall not be construed to provide a benefit to any person who is not a party to this Agreement;
      3. References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and
      4. A reference to a Party includes that Party’s successor-in-title and permitted assigns.
   5. If any definition in this Interpretation clause contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.
   6. Unless inconsistent with the context, an expression which denotes-
      1. Any one gender, includes the other gender; and
      2. The singular, includes the plural and *vice versa*.
   7. The termination of this Agreement will not affect the provisions which are intended to operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
   8. The Agreement is fully binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as if they had signed this Agreement in the first instance.
   9. Where figures are referred to in numerals and in words, if there is a conflict between the two, the words shall prevail.
   10. The provisions of this Agreement shall not be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

1. **DURATION**
   1. The Agreement commences on the Commencement Date, and shall subsist until the Termination Date unless terminated earlier in terms of this Agreement.
2. **SERVICE PROVIDER’S DUTIES AND OBLIGATIONS**
   1. The Parties acknowledge that the nature of the Services is highly regulated and that the Service Provider undertakes to, in rendering the Services, ensure that it complies with the requirements of this Agreement, Regulatory Authorities and Applicable Law. SARS therefore relies on the Service Provider to monitor and ensure compliance with Applicable Law, and the requirements of Regulatory Authorities.
   2. The Parties acknowledge that any costs associated with work on the Services or parts thereof which have to, at any time, be redone or modified due to the Service Provider’s non-compliance with Applicable Law or this Agreement, shall be for the account of the Service Provider, and shall not be recoverable from SARS.
   3. The Service Provider shall ensure that all parts of the Services that require certification and or licensing by Regulatory Authorities are duly certified and or licensed by the Service Provider as such.
   4. The Service Provider must –
      1. Execute the Services as contemplated in RFP 31/2017, along with the Proposal accepted by SARS.
      2. Execute the Services under the supervision of the SARS Designated Representative.
      3. Monitor the implementation of the Services against set targets, costs, and time frames.
   5. The Service Provider may not change the Key Personnel presented in its response to RFP31/2017 without the prior written consent of SARS and in this regard -
      1. The Service Provider may make a request to SARS to replace a member of its Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement: Provided that the proposed replacement has similar or better qualifications and experience.
      2. Where SARS approves the replacement of a member of the Key Personnel, the Service Provider shall, at its cost, provide a replacement acceptable to SARS within the time then prescribed by SARS.
      3. Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, and after having provided the Service Provider with the reasons for its finding and providing the Service Provider with a reasonable opportunity to respond to and/or refute the reasons, the Service Provider will have to replace at its cost, that member with one having similar or better credentials and in line with the timeframes then stipulated by SARS.
   6. The Service Provider must take Commercially Reasonable Efforts to prevent loss of data related to the Services.
   7. The Service Provider must charge fees for Services rendered to SARS in accordance with Annexure A hereto.
   8. The Service Provider must carry out all written instructions received from SARS timeously and in a diligent manner.
   9. The Service Provider must appoint a Designated Representative and communicate details of the representative to SARS on Commencement Date.
   10. The Service Provider must prepare, within a time period agreed upon by the Parties, an implementation plan for submission to SARS and render the Services in line with the plan. The said implementation plan must comply with the minimum requirements below:
       1. The implementation plan must reflect –
          1. the sequence and timing of operations by the Service Provider;
          2. any information or directive required of SARS by the Service Provider; and
          3. any other information which may be relevant according to the professional judgment of the Service Provider: Provided it is relevant to the Services.
       2. The implementation plan contemplated in Clause 5.10 above must be approved by the SARS Designated Representative in writing before implementation.
       3. The Service Provider may not deviate from the implementation plan without the prior written consent of the SARS Designated Representative.
   11. For the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, the Service Provider will maintain a record of the Services performed under this Agreement. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times, and subject to reasonable written notice, to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any Regulatory Authority. All costs incurred in performing audits under this clause will be borne by SARS, unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or requirements of a Regulatory Authority or similar institution having jurisdiction over SARS and/or the Service Provider, in which event such costs will be borne by the Service Provider.
3. **SERVICE PROVIDER’S UNDERTAKINGS**

The Service Provider undertakes to-

* 1. Provide the Services in accordance with the highest professional standards of the industry;
  2. Devote the necessary time, attention and skill to the Services and not engage in any business that will prevent the Service Provider from properly rendering the Services to SARS;
  3. Ensure that it has suitably qualified staff and sufficient resources at all times in order to properly render the Services to SARS;
  4. At all times act in an ethical manner and refrain from any corrupt business practices;
  5. Exercise reasonable care and diligence in the discharge of its obligations in terms of the Agreement;
  6. Ensure that it has sufficient contingency plans in place and agree that it shall at all times be responsible to SARS for the fulfilment of its obligations under this Agreement; and
  7. Comply with all Applicable legislation, including the Protection of Personal Information Act No.4 of 2013.

1. **SARS UNDERTAKINGS**

SARS undertakes to-

* 1. Give the Service Provider access to necessary documents, information or SARS’s premises;
  2. Take timeous management decisions and give necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;
  3. Monitor and review the Service Provider’s performance in terms of this Agreement. SARS however, reserves the right, at its exclusive discretion to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement; and
  4. Appoint a Designated Representative.

1. **PAYMENT AND SERVICE CHARGES**
   1. The Service Provider will invoice SARS for Services rendered according to the pricing accepted by SARS, as per Annexure A.
   2. Apart from the pricing accepted by SARS (Annexure A), no other fee or cost will be covered by SARS.
   3. The total, VAT inclusive contract price is reflected in Annexure A hereto.
   4. Subject to **Clause 8.6** below, SARS will effect payment in South African Rand within thirty (30) days of receipt of an accurate and complete invoice from the Service Provider.
   5. The Service Provider shall issue an invoice to SARS in a required format (i.e. a full description of the Services rendered and time spent, where applicable as well as the total fees) and in a timely fashion.
   6. Where SARS disputes the Service Provider’s invoice, SARS will notify the Service Provider of the dispute as well as the nature of the dispute within a period of seven (7) days of receipt of the invoice. The Parties will meet within ten (10) days from the date of such notice to resolve the dispute.
   7. Should the Parties fail to resolve the dispute, the matter will be dealt with in terms of **Clause 21** below.
   8. Until such time as the dispute is resolved, any disputed amount or portion of an invoice owing to the Service Provider by SARS shall not be deemed to be overdue.
   9. All amounts not disputed shall be paid by SARS to the Service Provider in the manner contemplated in **Clause 8.4** above.
   10. If the Service Provider fails to perform the Services within the specifications or turnaround times specified in this Agreement and the implementation plan contemplated in 5.10 above due to reasons solely attributable to the Service Provider, SARS shall, without prejudice to its other remedies under this Agreement, be entitled to deduct, as a penalty, for non-performance, delayed performance or defective performance, an amount of up to ten percent (10%) of the amount due to the Service Provider in the pertinent month or succeeding invoice due and payable to the Service Provider.
   11. A penalty is a non-performance, delayed performance or defective performance fee, and is payable regardless of the fact that the Service Provider ultimately delivers the pertinent performance.
2. **WARRANTIES**

* 1. The Service Provider hereby represents and warrants that-
     1. it is acting as the principal and not an agent of an undisclosed principal;
     2. it has the necessary skills, expertise, experience and resources that are required for the rendering of the Services in terms of this Agreement;
     3. its Key Personnel shall maintain the requisite confidentiality as may be required in each case;
     4. the execution and performance of the terms and conditions of this Agreement is legal and binding and does not constitute a violation of Applicable law, its founding documents or binding agreements to which it is party or by which it or its assets are bound;
     5. it has the capacity to timeously deliver the Services, time being of the essence;
     6. it shall not, in executing the Services, infringe any Intellectual Property Right of a third party;
     7. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
     8. it has the requisite comprehensive insurance contemplated in **Clause** **14** below;
     9. it shall at all times have, and comply with all legal requirements and with the terms and conditions of all necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the delivery of the Services; and
     10. no factual circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.
  2. By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must at all times comply with the manifest intent and obligations of this Agreement.
  3. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
  4. The provisions of this clause shall survive the termination of this Agreement.

1. **REPORTING**
   1. It is the responsibility of the Service Provider to supply SARS with accurate and relevant reports stated in RFP31/2017. The reports must be sufficiently detailed to provide SARS with the required information.
   2. The Parties may hold meetings at any time, at the reasonable request of either Party, subject to reasonable prior written notice thereof, to discuss any aspect of the Services.
   3. Any information provided by the Service Provider in the reports or meetings must be sufficiently detailed to provide assurance that the Services are adequately rendered.
2. **CONFIDENTIALITY**
   1. The Service Provider shall not, during the term of this Agreement and after its expiration, disclose any proprietary or confidential information (including personal information) relating to the Services, this Agreement or SARS’s business or operations to any third party without the prior written consent of SARS.
   2. “Proprietary information and confidential information” shall for purposes of this Agreement refer to, but shall not be limited to trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information; SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) as well as any information considered confidential in terms of any other Tax Act administered by the Commissioner for SARS, internal SARS policies and/or employee details to which the Service Provider may become privy during the contract term.
   3. Where the Service Provider is not certain about the confidentiality or otherwise of information, it shall treat the information as confidential until otherwise advised by SARS.
   4. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept secure and confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
   5. Where the Service Provider is called upon to disclose confidential SARS information due to legal process, the Service Provider shall, within two (2) days of being so called upon notify SARS of such an event.
   6. The Service Provider shall ensure that its personnel involved with the rendering of the Services to SARS individually signs the SARS Oath of Secrecy before commencing with execution of this Agreement, and submit the original thereof to SARS for record keeping purposes.
   7. The Service Provider will protect the interests of SARS and its Confidential Information by-
      1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement (including relevant support staff) and then only on a “need to know” basis;
      2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
      3. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter; and
      4. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
3. **LIABILITY OF PARTIES**
   1. A Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party’s failure to perform its obligations in the manner required by this Agreement.
   2. The Service Provider shall further be liable to SARS for all direct damages and/or losses suffered by SARS as a result of breach of ethical duty; negligence or a criminal act committed by the Service Provider or employees of the Service Provider.
   3. The Service Provider shall further be liable to SARS for any damages or losses which constitute indirect, special and/or consequential damages:
      1. where such damages are caused by any breach of confidentiality;
      2. which arise due to the Service Provider or any of its employee’s wilful misconduct, dishonesty or gross negligence, regardless of whether such loss arose out of contract or delict; and or
      3. which arise due to damage to property, death or bodily injury of any agent, employee, customer, business invitee, or other person caused by the delictual conduct of the Service Provider or any of its employees
4. **INDEMNITY**
   1. The Service Provider shall indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at Law in respect of the Service Provider’s breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents’ wilful conduct or negligence during or after the execution of the Services.
5. **INSURANCE**

* 1. The Service Provider shall, on or before the Commencement Date and for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, professional indemnity insurance cover and/or public liability insurance cover, against all actions, suits, claims or other expenses arising in connection with damages or loss for which it may be liable to in terms of this Agreement.
  2. The Service Provider shall provide SARS with certificates of insurance, evidencing that the insurance cover required under this Agreement is maintained in force, on the date of signing this Agreement and provide evidence of renewal of such insurance at least three (3) Business Days prior to expiration thereof.
  3. The Service Provider shall provide SARS with at least thirty (30) days’ notice prior to any material modification, cancellation or non-renewal of the insurance policies.
  4. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 14.1** above, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
  5. Without limiting the generality of SARS’s rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required hereunder, or to provide evidence of renewal within the period indicated herein, SARS may purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

1. **BREACH**
   1. Where a Party (the “Defaulting Party”) breaches any of the provisions herein, the other Party (the “Aggrieved Party”) may give notice to the Defaulting Party and request it to remedy the breach within a period of ten (10) days.
   2. If the Defaulting Party fails to remedy the breach within the specified time, then the Aggrieved Party may claim specific performance, or terminate the Agreement forthwith and claim damages from the Defaulting Party.
   3. Notwithstanding **Clause** **15.2** above, the Aggrieved Party shall be entitled to any other remedies at law, as may be applicable.
2. **TERMINATION**
   1. This Agreement will terminate on Termination Date, unless terminated earlier in terms of other provisions of this Agreement.
   2. In the event that the Service Provider is unable to pay its debts or has an administrator, liquidator or similar person or officer appointed, or where it becomes the subject of business rescue proceedings, compromises generally with its creditors, is unable to pay any judgment granted against it within ten (10) days, cease for any other reason to carry on business, or in the reasonable opinion of SARS, any of these events appear likely, SARS may terminate this Agreement without any liability to the Service Provider.
   3. SARS may, by giving notice to the Service Provider, terminate the Agreement without liability to the Service Provider, in respect of the Services (in whole or in part), as of a date specified in the notice of termination in the event that the Service Provider, without SARS’s written consent –
      1. sells all or substantially all of its assets; or
      2. undergoes a change of ownership/management. For this purpose, a change of ownership/management shall be deemed to have occurred in circumstances where any natural or legal person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Service Provider.
3. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called “*force majeure* event”) then the Party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues (excluding payment obligations which fell due before the said *force majeure*).
   2. The affected Party’s relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the *force majeure* event, provided always that a written notice shall be promptly given of any such inability by the affected Party.
   3. Any Party invoking *force majeure* shall upon termination of such *force majeure* give prompt written notice thereof to the other Party. Should a *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
   4. Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a *force majeure* event.
4. **RELATIONSHIP BETWEEN PARTIES**

The Service Provider is an independent contractor and shall not be construed as a partner, joint venture partner or agent, or employee of SARS in the performance of its duties and responsibilities pursuant to this Agreement.

1. **NON–EXCLUSIVITY**
   1. The Service Provider is appointed to provide the Services to SARS on a non-exclusive basis and SARS will not be precluded from obtaining services that may be similar or identical to the Services from any other service provider.
   2. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract from SARS for Services after the Termination Date, whether under this Agreement or otherwise.
2. **INTELLECTUAL PROPERTY**
   1. The Parties will retain ownership of all of their pre-existing intellectual property rights.
   2. In the event of the Service Provider’s intellectual property being incorporated into any aspect of the Services being rendered in terms of this Agreement, the Service Provider hereby grants SARS a non-exclusive, royalty free license for the duration of this Agreement to use, alter, and adapt such intellectual property for its own purposes in connection with the Services.
   3. Subject to pre-existing intellectual property rights of the Service Provider and/or any third party, all intellectual property rights to literary works created in the course of executing the Services shall vest exclusively in SARS.
   4. In the event that the Service Provider does not hold the right, title and interest to all intellectual property incorporated in the rendering of the Services, the Service Provider undertakes to procure the necessary licenses and/or use rights for SARS from the relevant third party.
   5. The Service Provider warrants to SARS that it holds the right, title and interest to the intellectual property it will be utilizing to render the Services, alternatively it has procured the necessary rights from the relevant third party and indemnifies SARS against any claim of infringement, which any third party may make or bring against SARS as a result of this Agreement.
3. **DISPUTE RESOLUTION**

* 1. In the event of a dispute of whatsoever nature arising out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties’ rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
  2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
  3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
  4. This clause is severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.
  5. Subject to **Clause 8.8 above**, neither Party shall be entitled to withhold performance of any of its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

1. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

* 1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE Act.
  2. Upon the Commencement Date of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise and Qualifying Small Enterprise
  3. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall remain BEE compliant, failing which it must provide written confirmation from a verification agent that it is in the process of being rated.

1. **TAX COMPLIANCE**

* 1. The Service Provider warrants that as of the Commencement Date, it is in full compliance with, and throughout the term of this Agreement shall remain in full compliance with all the Applicable laws relating to taxation in the Republic of South Africa.
  2. It will be a ground for termination, where the Service Provider fails to remain tax compliant throughout the term of the Agreement. Termination resulting from such an eventuality will result in SARS having no liability whatsoever towards the Service Provider.

1. **GENERAL**
   1. **Assignment**

Subject to Applicable Law, neither Party shall be entitled to assign, cede, or delegate any rights and/or obligations or any benefit arising from this Agreement, without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld.

* 1. **Subcontracting**
     1. Subject to Applicable Law, the Service Provider shall not, without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
     2. Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in Clause 24.2.1 above, a complete written proposal for SARS’s approval containing-
        1. Full details and business references of the subcontractor;
        2. A full description of the part of the Services it proposes for subcontracting;
        3. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
        4. The value of the Services proposed to be subcontracted, expressed as a percentage;
        5. The B-BBEE status and certificate of the subcontractor; and
        6. A document depicting the tax compliance status or Tax Clearance Certificate of the subcontractor.
     3. Notwithstanding the provisions of this **Clause 24.2,** the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.
     4. Subject to the provisions of **Clause** **24.2.1 above**, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.
     5. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.
  2. **Severability**

Where any of the terms and conditions of this Agreement is found to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

* 1. **Waiver**

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by an Authorised Signatory of the Party against which such change, waiver or discharge will be effective and only in that specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power, or privilege under this Agreement will be construed as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.

* 1. **Authorised Signatories**

The Parties agree that this Agreement and any Schedules, Annexures or Addenda to this Agreement shall not be valid unless signed by all authorised signatories of SARS and the Service Provider.

* 1. **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

* 1. **Whole Agreement and Amendment**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto.

* 1. **Law Governing Contract**

This Agreement shall be governed by the laws of the Republic of South Africa, and the Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

* 1. **Covenant in Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

* 1. **Costs**

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation, and execution of this Agreement.

1. **ADDRESSES**
   1. All notices forming part of legal proceedings must be served at the physical address of a Party, whilst any other communication (including, without limitation, any approval, consent, demand, query or request) may be sent by registered post, delivered by hand, transmitted by electronic mail to the recipient Party at its relevant address/numbers set out below-

**For SARS**

For service of ***legal processes*** the address shall be as follows-

Attention: Group Executive - Corporate Legal Services

Khanyisa Building

281 Middel Street

Nieuw Muckleneuk

Pretoria

For service of ***notices and communication*** the address shall be as follows-

Attention: [to be added]

Procurement

Linton House, Brooklyn Bridge

570 Fehrsen Street

Brooklyn

Pretoria

**For Service Provider**

…

…

…

…

…

Email \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Either Party may, by written notice to the other Party, change any of the addresses or numbers at which, or the Designated Representatives for whose attention legal notices or other communications should be given, provided that such change/s will not become effective until seven (7) days after notice to this effect was given.
  2. Any notice or other communication given by any Party to the other Party which-
     1. Is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the seventh (7th) day after the date of posting; or
     2. Is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
     3. Is transmitted by electronic mail to the addressee at the addressee’s specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender’s electronic mail records.
  3. The provisions of this **Clause 25** shall not invalidate any notice or other communication actually received by a Party, even if not given in the manner prescribed.
  4. The Parties choose their respective addresses in **Clause 25.1** above as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are Party must be served.

1. **CONFLICT OF INTERESTS**
   1. The Service Provider confirms that to the best of its knowledge it shall not be acting in conflict with the interests of SARS when providing the Services.
   2. The Service Provider undertakes to notify SARS, at the earliest opportunity practical in the circumstances, of the nature and extent of any direct or indirect interests which it may have in conflict with SARS’s interests, in the event that a conflict of interest is identified.

**SIGNED AT PRETORIA FOR AND BEHALF OF SARS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Mbuyiselo Gwala**

**Executive: Talent Management**

**Date:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Moalosi Borotho**

**Acting Group Executive: Procurement**

**Date:**

**FOR AND ON BEHALF OF SERVICE PROVIDER**

**Full Names : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Capacity : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Place : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**